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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,377	10/07/2003	Peng Lee	026018.46631	5920
28172	7590	01/12/2007	EXAMINER	
BUTLER, SNOW, O'MARA, STEVENS & CANNADA PLLC			PHAM, TOAN NGOC	
6075 POPLAR AVENUE			ART UNIT	PAPER NUMBER
SUITE 500			2612	
MEMPHIS, TN 38119				
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/12/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/680,377	Applicant(s) LEE, PENG
	Examiner Toan N. Pham	Art Unit 2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 29 November 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-13, 15-18 and 20-36 is/are pending in the application.  
4a) Of the above claim(s) 1-13, 20-25, 33 and 34 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 15-18, 26-32, 35 and 36 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_ .  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_ . 5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

Claims 1-13, 20-25, 33 and 34 have been withdrawn from considerations.

Please cancel these claims in the next communication.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Litzkow et al. (US 4,671,114) (of record).

Regarding claim 35: Litzkow et al. disclose an acoustic insect detection comprising detection member having a proximal and distal end, said proximal end contacting a diaphragm (1) and said distal end be configured to be inserted into a potential infestation site without damaging the structure; a means to mechanically amplify the sound produced by said diaphragm; and a means to receive airborne sound and to convert said sound to an electrical signal (col. 2, lines 7-26).

Regarding claim 17: Litzkow et al. disclose the means to mechanically amplify the sound is a stethoscope (col. 2, line 58).

Regarding claim 18: Litzkow et al. disclose the means to receive airborne sound and to convert said sound to an electrical signal is a microphone (5)(col. 2, line 22).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Litzkow et al. (US 4,671,114) (of record) in view of Vick et al. (US 5,005,416) (of record).

Regarding claim 26: Litzkow et al. disclose an acoustic insect detection comprising detection member having a proximal and distal end, said proximal end contacting a diaphragm (1) and said distal end be configured to be inserted into a potential infestation site without damaging the structure; a means to mechanically amplify the sound produced by said diaphragm; and a means to receive airborne sound and to convert said sound to an electrical signal (col. 2, lines 7-26). Litzkow et al. does not disclose transmitting the data to a central operation center. Vick et al. disclose an insect detection system comprising an acoustic detector for detecting termites in a structure and transmitting data collected by the sensors to a central operations center (53) for inclusion in a central database of termite data and information (col. 8, lines 37-63). At the time of the invention, it would have been obvious to one of ordinary skill in the art to utilize a remote communication as taught by Vick et al. in a system as disclosed by Litzkow et al. for providing one monitoring center to conveniently monitored a plurality of remote detection sites.

Regarding claim 27: Litzkow et al. disclose an acoustic insect detection comprising detection member having a proximal and distal end, said proximal end contacting a diaphragm (1) and said distal end be configured to be inserted into a potential infestation site without damaging the structure; a means to mechanically amplify the sound produced by said diaphragm; and a means to receive airborne sound and to convert said sound to an electrical signal (col. 2, lines 7-26). Vick et al. disclose affixing the sensor to a structure, communication the signal to a computing device (53) for comparing/processing of insect infestation (col. 8, lines 37-63). Litzkow et al. does not disclose transmitting the data to a central operation center for comparing/processing of the data. Vick et al. disclose an insect detection system comprising an acoustic detector for detecting termites in a structure and transmitting data collected by the sensors to a central operations center (53) for inclusion in a central database of termite data and information (col. 8, lines 37-63). At the time of the invention, it would have been obvious to one of ordinary skill in the art to utilize a remote communication as taught by Vick et al. in a system as disclosed by Litzkow et al. for providing one monitoring center to conveniently monitor and process the insect infestation data of the plurality of remote detection sites.

Regarding claim 28: Vick et al. does not disclose the vibration signals are between 0.5 and three milliseconds in length; however, it is merely that the length of time varies with different systems and an obvious preference signal to indicate a level of insect infestations.

Regarding claim 29: Vick et al. disclose the computing device is a computer (53) at a remote site is inherently a remote central processor.

Regarding claim 30: Vick et al. disclose the hand held device (60) (Fig. 10).

Regarding claim 31: Vick et al. disclose detection of infesting insects (abstract); thus, infesting insects are termites.

Regarding claim 32: Vick et al. disclose the control signal stored in the computing device is modified to include the detected signals (Fig. 7; col. 7, lines 30-50).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 15, 16 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Litzkow et al. (US 4,671,114).

Regarding claims 15 and 16: Litzkow et al. does not disclose the detection member is a probe or a spike; however, one of ordinary skill in the art would recognize that it is obvious to disclose the sound detector in other forms, besides the microphone or a stethoscope, to detect sound.

Regarding claim 36: Litzkow et al. does not disclose the detection member is between 6 to 12 inches in length; however, it is merely an obvious choice for providing various length for the detection member.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art of Shade et al. (US 4,809,554), Robbins et al. (US 5,285,688), Randon (US 5,832,658), and Duegan (US 6,883,375) are cited to show a variety of wood detecting insect devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan N. Pham whose telephone number is (571) 272-2967. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel J. Wu can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Toan N Pham  
Primary Examiner  
Art Unit 2612

 1/5/07